

REMARKS/ARGUMENTS

Amendments in General

1. Claim 1 has been amended to particularly point out the feature that the body and the insert are made of different materials. Similar amendments were made to claims 19 and 29. These amendments add no new matter to the specification and acceptance of these amendments is respectfully requested.
2. Claim 21 has been amended to incorporate the features which were previously claimed as a part of claim 11. This amendment adds no new matter to the specification and Applicant respectfully submits that the rejection of claim 21 as being anticipated has now been overcome.

Claim Rejections - 35 USC § 102

3. The Examiner rejected claims 1, 3, 6-10, 12-14, 16, 17, 19, 21, 23-36 and 28 under §102(b) as being anticipated by Nance.
4. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 828 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). MPEP § 2131.
5. The drain trap described in Nance is a device that is all one piece that is formed together. As is shown from Figures, 2, 3, and 4 of the application and the final sentence of paragraph 20, the vertical conduit and the cover are made of the same material, not two different types of material. Furthermore, as described in the Nunez device the vertical conduit 30 and the cover 24 are molded and manufactured together and as such are not inserted one into the another. The two pieces are integrally formed together.
6. This is significantly different from the present invention which has been specifically amended so as to enumerate that the insert and the body of the present invention are made from two different materials.
7. Furthermore, because the Nunez device is all made of one piece, it lacks this new limitation that requires that the insert and the body be made of two pieces of two different types of material. Therefore claims 1, 19 and 26 and all of the claims that depend from these independent base claims are not anticipated by the Nunez reference.

8. For these same reasons Applicant respectfully asserts that claim 16 is also novel over Nunez because there are two distinct steps of providing a body and locating an insert into the body. This enumeration of steps is clearly not anticipated or shown in the Nunez reference because the vertical conduit and the cover are molded and manufactured together in the Nunez reference. The Nunez reference simply does not contain any such insert.

Claim Rejections - 35 USC § 103

9. The Examiner rejected claims 4,5,11,18, and 27 under §103(a) as being unpatentable over Nunez in view of Nance.

10. "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on the Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991)." MPEP § 706.02(j).

11. The device described in claim 20 is not described in this combination which has been set forth by the Examiner. The waste trap described in claim 20 is both metal and unitary. The waste trap described in the Nunez patent is plastic and is made up of two parts, the cover 20 and the dome 22. While it would be possible to mold the two pieces of the Nunez waste trap, it would not be possible to mold the body and the insert of the present invention as a single piece as would be required if Nunez and Nance were combined. The present invention specifically states that these are made from two different pieces and types of material.

12. Furthermore, in paragraph 28 of the Nunez reference the flexibility of the conduit is described. This flexibility is an advantage which takes place through the use of polymer materials. The skilled person in the art would review the Nunez device and see the advantages of that polymer-based design. This person would not then be motivated to alter this design utilizing the teachings from an arguably inferior non-flexible device found in a document more than 70 years older than the Nunez device. The two references teach away from each other and their intercombination would not be an obvious modification.

13. A person of ordinary skill in the art would not be tempted to adopt the unitary body of Nance into the Nunez design, because the Nunez device teaches away from such an intercombination. The Nunez device teaches that one of the advantages of that invention is that the dome trap in the Nunez device is easy to open and clean in the event of a clog, and it is also easy to open to retrieve an item inadvertently dropped into the sink. The Nance device does not contain any of these features but is rather, a one-piece solitary design, as such it cannot be used to flex to bend or to open into various positions.

14. Even if this intercombination of Nance and Nunez were to take place, such a combination would not provide all of the features and advantages of the present invention. Nunez clearly teaches the presence of a two part trap which is injection molded from a polymer material, this two part arrangement provides advantages that are not present in the Nance design and would be removed if the design and shape of the Nance design were to be incorporated or combined with the Nunez device.

15. Therefore, Applicant respectfully submits that no motivation or suggestion exists among persons of skill in the art which would allow them to combine the teachings of Nunez with the teachings of Nance to arrive at the invention claimed in the present invention.

16. Applicant respectfully submits that the present invention is allowable in view of the aforementioned arguments and remarks.

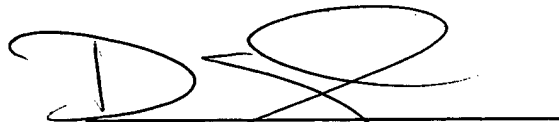
Conclusion

If the Examiner feels it would advance the application to allowance or final rejection, the Examiner is invited to telephone the undersigned at the number given below.

Reconsideration and allowance of the application as amended is respectfully requested.

DATED this 4th day of 2005.

Very respectfully,



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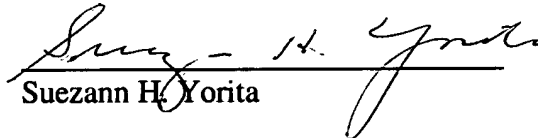
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